

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KHALID HORNE,	§	
	§	No. 520, 2004
Defendant Below,	§	
Appellant,	§	
	§	
v.	§	Court Below: Superior Court
	§	of the State of Delaware
STATE OF DELAWARE,	§	in and for New Castle County
	§	Cr. I.D. No. 0107022453
Plaintiff Below,	§	
Appellee.	§	

Submitted: December 14, 2005

Decided: February 22, 2006

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices.

ORDER

This 22nd day of February, 2006, on consideration of the briefs of the parties, it appears to the Court that:

1) Khalid Horne appeals from the Superior Court's denial of his motion for postconviction relief. After initially reviewing Horne's contentions and the record, this Court remanded, and directed the Superior Court to obtain trial counsel's affidavit in response to Horne's allegations, and to make supplemental findings and conclusions.¹ In its Report on Remand, the Superior Court carefully reviewed trial

¹*Horne v. State*, 887 A.2d 973 (Del. 2005).

counsel's affidavit and the trial transcript and concluded that "defendant has not established ineffective assistance of counsel under the well-defined criteria set forth in *Strickland v. Washington*."^{2,3}

2) In his supplemental brief, Horne argues that the trial court missed the point by focusing on the weight of the drugs, rather than the accuracy of the scale. We find no merit to this contention. Horne's trial counsel made a tactical decision not to seek additional information about the accuracy of the scale since the Medical Examiner testified that the scale was subject to a margin of error. During closing, Horne's counsel pointed out the "built-in error" in the calibration of the scale and argued that, because of that error, Horne could not be guilty of trafficking.

3) We agree with the trial court's conclusion that trial counsel was not ineffective – either for failing to independently weigh the drugs or for failing to independently establish the accuracy of the scale used by the Medical Examiner – and affirm on the basis of the supplemental record and the decision of the Superior Court in its Report on Remand.

²466 U.S. 668 (1984).

³Report on Remand, October 11, 2005.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is, AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice